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AUTHOR Reynolds, William Bradford
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ABSTRACT

In this statement by William Bradford Reynolds, Assistant Attorney General under the Reagan Administration, the problem of prison overcrowding is discussed in relation to the definition of "cruel and unusual punishment." The Supreme Court's decision in the Chapman versus Rhodes case is presented as an example in which overcrowding as only one factor in the "totality" of prison life was not judged as unconstitutional. Reynolds states that the Federal Justice Department does not intend to ignore enforcement of the Civil Rights for Institutionalized Persons Act, but intends to enforce it in a manner fully sensitive to practical difficulties of the States and their localities. (JCD)

Department of Justice

REMARKS

OF

WILLIAM BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

NATIONAL GOVERNORS CONFERENCE

11:00 A.M.
SUNDAY, FEBRUARY 21, 1982
CAPITOL HILL, HYATT REGENCY

PRISON OVERCROWDING: Legal Significance and Constitutional Implications

Distinguished Governors and Guests. I am pleased to have this opportunity to meet with you this morning about a matter of mutual concern, a concern that is growing in proportion to our burgeoning prison population.

The legal significance of prison overcrowding stems from the Eighth Amendment to the Federal Constitution, which prohibits "cruel and unusual punishment". Unfortunately, that single phrase provides only limited guidance toward seeking a legal solution to a very practical problem. Rarely does one find today the kind of blatant, inhumane brutalization of inmates that stands out like a Constitutional red flag to even the most casual observer. Rather, the inquiry in prison cases -- which invariably demands lengthy and complex litigation -- turns on a host of interrelated factors, which collectively go to demonstrate that inmates at a certain facility are being subjected to "cruel and unusual punishment" in violation of the Constitution.

This approach now marches under the banner of "totality of circumstances". Several distinct factors have been identified as significant to the "totality" rationale: for example, health and safety characteristics of the facility; inmate classification systems; conditions in isolation cells; medical facilities and treatment; food service; personal hygiene and sanitation; incidence of inmate violence and assaults; number

of assaults; number and training of prison personnel; training, vocational rehabilitation and exercise programs; and overcrowding. No single condition is critical to the finding of an Eighth Amendment violation, and even one as significant as overcrowding can be entirely lacking, and still a finding of "cruel and unusual punishment" can be made by a Court.

Nonetheless, overcrowding is certainly a key factor in the "totality" equation, the presence of which usually (but not always) signals deficiencies in other areas of prison life. The most recent U.S. Supreme Court case on prison conditions -- Chapman v. Rhodes, (49 U.S.L.W. 4677 (U.S., June 15, 1981)) -- provides a useful perspective for the legal analysis. In Chapman, the U.S. Supreme Court ruled that confining two inmates in a cell does not alone constitute "cruel and unusual punishment." Significantly -- and perhaps remarkably -- there were no material allegations that other major deficiencies existed in the Ohio facility. The Court thus concluded -- and in my view quite correctly -- that the "totality" of prison life at that unit neither caused "the wanton and unnecessary infliction of pain" on inmates, nor subjected them to punishment "disproportionate to the severity of the crime" for which they were imprisoned (id. at 4697).

It would, I think, be error to read the Chapman decision as signalling a major retreat from the traditional attitude of viewing overcrowding as a key factor in prison condition suits. By the same token, it would also be erroneous after Chapman to attach too much significance to overcrowding

in a constitutional context. Perhaps the lesson to be learned is nothing more than that overcrowding suggests a reason for further scrutiny. It is a condition that varies not only from institution to institution, but, indeed, it does not even remain static within institutions. Its legal significance cannot be judged in a vacuum, but must be determined in an overall context measured by the "totality" standard.

In Chapman, the set of conditions did not make out a constitutional violation. Thus, 38% of the inmate population was double-celled in 63-square-foot cells; there was, however, open access to day rooms which did not suffer for lack of available space; in addition, the record in Chapman revealed only isolated incidents of failure to provide medical or dental care; no evidence was presented indicating that double-celling itself caused greater violence; and the guard-to-inmate ratio was acceptable.

A different result might well be expected in another case if double celling was the practice under a different set of circumstances -- for example, where over 65% of the inmate population is double-celled in less than 50-square-foot cells, with the rest of the inmates housed in extremely overcrowded dormitory areas; where, in addition, day room space is severely limited; where the entire health care system showed deliberate indifference to serious medical needs; where there is a degree of inmate violence; where the guard-to-inmate ratio is sufficiently low to raise serious questions as to adequate

security; and where inmates are being used to perform essential functions traditionally assigned to guards and other staff personnel.

These examples, quite obviously, suggest the extremes. The hard cases -- and most of these cases are "hard" -- fall somewhere in between. The Department of Justice intends to continue with examinations of prisons brought to our attention on the claim that "flagrant and egregious" conditions exist. If, based on a review of the "totality of circumstances", we believe conditions demonstrate a "wanton and unnecessary infliction of pain", we will prosecute under the Civil Rights of Institutionalized Persons Act of 1980, as is our responsibility. I should emphasize, however, that no suit will be brought under this statute without first seeking to resolve the identified problem-areas through informal conciliation. Litigation will be our last resort -- not our first reaction.

If, after all else fails, a lawsuit must be brought and a finding of liability follows, an equally complex set of problems arises in trying to fashion appropriate relief. Remedies to overcrowded conditions typically involve orders directing construction of new facilities, release of inmates, increased use of work-release programs, increased use of "good time", and other administrative tools to hasten release times. In some instances, courts have been overly intrusive in ordering relief, mandating detailed requirements to be

followed by the State. In other circumstances, courts have properly left the day-to-day administration of prisons to state officials. Where the fine line between the two is to be drawn remains the subject of debate.

During this Administration, the Justice Department intends to support relief that provides a flexible, yet meaningful, solution to the problems, but leaves many of the details to the States. Thus, cell-space requirements will be considered in light of other conditions, not as absolutes. If improvements are made in other areas -- such as, the inmate classification system, guard-to-inmate ratios, and the security system, to name but a few -- the Department would view a modest adjustment to space requirements as appropriate, even if a degree of double-celling resulted.

The problem of prison overcrowding is -- as the panel discussion today underscores -- a serious one that promises no easy solutions. Efforts by States and localities to alleviate overcrowding deserve federal support and encouragement. This means, on the litigation front, not that the Justice Department intends to ignore its enforcement responsibilities under the Civil Rights for Institutionalized Persons Act, but that it intends to carry out those responsibilities in a manner fully sensitive to the practical difficulties facing the States and their localities.

Thus, the emphasis will be on the total picture, not its isolated parts; on conciliation, not litigation; and on removing, rather than promoting, federal intrusiveness. In this manner, we believe that we can continue, where necessary, to prosecute those prison cases that deserve prosecution, but without embarking in the process on an impermissible interference by the federal government with the manner in which State and local prisons and jails are run.